

EXHIBIT 11

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - -

STAR AUTO SALES OF : Civil Action No.:
BAYSIDE, INC. (d/b/a : 1:18-cv-05775-ERK-CLP
STAR TOYOTA OF :
BAYSIDE), STAR AUTO :
SALES OF QUEENS, :
LLC (d/b/a STAR :
SUBARU), STAR HYUNDAI :
LLC (d/b/a STAR :
HYUNDAI), STAR NISSAN, :
INC. (d/b/a STAR :
NISSAN), METRO :
CHRYSLER PLYMOUTH :
INC. (d/b/a STAR :
CHRYSLER JEEP DODGE), :
STAR AUTO SALES OF :
QUEENS COUNTY LLC :
(d/b/a STAR FIAT) and :
STAR AUTO SALES OF :
QUEENS VILLAGE LLC :
(d/b/a STAR :
MITSUBISHI), :

Plaintiffs, :

vs. :

VOYNOW, BAYARD, WHYTE :
AND COMPANY, LLP, HUGH :
WHYTE, RANDALL FRANZEN :
AND ROBERT SEIBEL, :

Defendants. :

- - -

FRIDAY, FEBRUARY 3, 2023

- - -

(Caption continued on page 2.)

Job No. CS5701935

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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5 FRIDAY, FEBRUARY 3, 2023
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9 Oral Deposition of JACQUELINE CUTILLO, as
10 corporate designee for Star Auto Sales of Queens, LLC
11 d/b/a Star Subaru, taken at Marshall Dennehey, 2000
12 Market Street, Suite 2300, Philadelphia, Pennsylvania,
13 commencing at 9:05 a.m., before Lauren Sweeney, a Court
14 Reporter and Notary Public.

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1 A P P E A R A N C E S:

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18 - - -

19 ALSO PRESENT:

20 RANDALL FRANZEN, VIA TELEPHONE
21 JEREMY KOUFAKIS
22 MICHAEL KOUFAKIS, VIA TELEPHONE
23 STEVE RAMBAM, VIA TELEPHONE

24 - - -
25

I N D E X

- - -

TESTIMONY OF: JACQUELINE CUTILLO PAGE

By MS. FITZGERALD. 6

- - -

EXHIBITS

- - -

NUMBER	DESCRIPTION	PAGE
Subaru-1	Notice	6
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1 DEPOSITION SUPPORT INDEX

2 DIRECTIONS TO WITNESS NOT TO ANSWER

3 Page Line

4 (None)

5

6

7

8 REQUEST FOR PRODUCTION OF DOCUMENTS

9 Page Line Description

10 (None)

11

12 STIPULATIONS

13 Page Line

14 (None)

15

16 QUESTIONS MARKED

17 Page Line

18 (None)

19

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22

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JACQUELINE CUTILLO

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JACQUELINE CUTILLO, after
having been first duly sworn, was
examined and testified as follows:

- - -

BY MS. FITZGERALD:

Q. Okay. Good morning, Jackie. Round three. This
is the third deposition that you've taken as a corporate
designee. I'm not going to go over the deposition
instructions. I know you understand those.

A. Yes.

Q. You are here today as the representative
starting off today for the Plaintiff, Star Auto Sales of
Queens, LLC d/b/a Star Subaru; is that correct?

A. That is correct.

MS. FITZGERALD: I'm going to mark as
Subaru-1 the notice.

- - -

(Exhibit Subaru-1 was marked
for identification.)

- - -

MR. LABUDA: Okay.

- - -

(Exhibit Subaru-2 was marked
for identification.)

JACQUELINE CUTILLO

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1 individual customer transactions?

2 A. As well as Voynow.

3 Q. On what basis does the company contend that
4 Voynow was aware of the alleged concealment of this fraud
5 for each of the 67 customers?

6 A. Aside from being told by Gladys, they also
7 reviewed all our books and records every single time they
8 came to the dealership and reviewed the service and parts
9 receivables schedules.

10 Q. So, now, the company is contending that Gladys
11 told Voynow what specifically? Because you've already
12 testified she asked them about the advance payment.

13 A. Applying to the accounts receivable schedule.

14 Q. Did she tell them something else above and
15 beyond that?

16 A. She told them that the Subaru money was going
17 towards the Subaru service and parts accounts receivable
18 that were claims for customer CODs and deposits.

19 Q. Okay. And is that the conversation that you're
20 contending occurred on or about March of 2013, when the
21 first advance payment came in, or is it a second
22 conversation that Gladys had with Voynow?

23 A. I don't know if it was 2013 or 2014, but it's a
24 conversation that she had with Voynow.

25 Q. So it's one conversation, correct?

JACQUELINE CUTILLO

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1 THE WITNESS: I wouldn't say they're a
2 supervisor, but if you have a question in regards
3 to something that they're affiliated with, you
4 would ask them a question.

5 BY MS. FITZGERALD:

6 Q. All right. We can move on from that scheme.

7 Before we do, has the company made any
8 claim under its employee theft policy regarding either
9 the conduct of Vivian, Filardo, or anyone else in
10 connection with that scheme?

11 A. Not that I'm aware.

12 Q. Okay. So going back to the damage chart, there
13 is a scheme labeled the Motor Sports Advertising scheme
14 that allegedly occurred from November 25th, 2008, to
15 November 1st, 2016, in the amount of \$1,419,874.83?

16 A. That is correct.

17 Q. Okay. And the company alleges according to this
18 chart that Mr. Filardo unbeknownst to Subaru operated a
19 sole proprietorship, Motor Sports Advertising d/b/a
20 Subaru Motor Sports under the alias name Filatdo,
21 F-I-L-A-T-D-O, solely for the purpose of receiving
22 ill-obtained payments from Subaru for advertising work
23 that was never done.

24 A. From Star Subaru.

25 Q. From Star Subaru for advertising work that was

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1 never done.

2 A. That is correct.

3 Q. All right. When was this scheme discovered?

4 A. Early 2018.

5 Q. By whom?

6 A. A phone call came into the accounting office
7 asking for a payment, and we had no knowledge of that
8 person that was on the phone, who they were. Michael
9 Koufakis overheard the conversation and instructed the
10 office to put that call on hold, and he then spoke with
11 the individual.

12 Q. Okay. And is that individual you're referring
13 to John Alexander?

14 A. That is correct.

15 Q. And you said this was discovered in early of
16 2018?

17 A. Yeah.

18 Q. So at that point Rosenfield had been engaged to
19 provide forensic accounting services for close to a year?

20 A. Yep.

21 Q. Was this scheme in any way investigated by
22 Rosenfield?

23 A. I don't believe so.

24 Q. So who investigated it?

25 A. Michael Koufakis spoke with Mr. Alexander, and

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1 conversation and then had me put it on hold and took the
2 call.

3 Q. Okay. If you could look at Subaru-2, please.

4 A. Okay.

5 Q. This is the Amended Complaint that the company
6 has filed against Mr. Filardo and Motor Sports d/b/a
7 Motor Sports Advertising.

8 A. Okay.

9 Q. Does paragraph 33 through 44 represent the
10 company's allegations with regards to this scheme?

11 A. Through what number, 40-what?

12 Q. 4.

13 A. Yes.

14 Q. Okay. According to paragraph 55, Filardo was
15 responsible for hiring the advertiser; is that correct?

16 A. That is correct.

17 Q. Okay. And that's part of his role as sales
18 manager?

19 A. That is correct.

20 Q. And is that the responsibility for all of the
21 dealership sales managers or is Subaru unique?

22 A. No. That is correct.

23 Q. And do the sales managers have authority to
24 enter into contractual agreements on behalf of the
25 company?

JACQUELINE CUTILLO

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1 MR. LABUDA: Objection to scope, but you
2 can answer.

3 THE WITNESS: During that period of time,
4 yes.

5 BY MS. FITZGERALD:

6 Q. Did the company have a policy or practice in
7 place whereby advertising vendors or outside vendors had
8 to be approved by ownership?

9 A. One more time.

10 THE WITNESS: Repeat that.

11 - - -

12 (The court reporter reads back
13 the previous question.)

14 - - -

15 THE WITNESS: They had the authority to
16 hire advertising vendors.

17 BY MS. FITZGERALD:

18 Q. And enter into a contractual arrangement with
19 these vendors for purposes of advertising services?

20 MR. LABUDA: Objection, but you can
21 answer.

22 THE WITNESS: I don't believe there was a
23 contract in regards to this vendor.

24 BY MS. FITZGERALD:

25 Q. So on that point, the company never had a

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1 written contract with the advertising vendor associated
2 with this particular scheme.

3 A. That is correct.

4 Q. Did the company have any type of written
5 document whatsoever, not necessarily a formal contract,
6 that memorialized the terms of the advertising
7 arrangement?

8 A. Not that I'm aware.

9 Q. Did the company have a policy or practice in
10 place that required some form of written document from a
11 vendor that set forth the terms regarding services that
12 were being provided?

13 A. Not necessarily, no.

14 Q. Okay. Did the company have a budget for
15 advertising expenses?

16 A. No.

17 Q. Did the company have a practice in place where
18 it reviewed its advertising expenditures on an annual
19 basis or quarterly basis or any other periodic basis?

20 A. Did you say owners? What did you say? Manager?

21 Q. I said the company.

22 A. The company. Can you be more specific?

23 Q. Anyone acting on behalf of the company.

24 A. I don't know.

25 Q. Did the company coordinate its advertising

JACQUELINE CUTILLO

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1 MR. LABUDA: For advertising?

2 MS. FITZGERALD: Yes.

3 THE WITNESS: I believe so.

4 BY MS. FITZGERALD:

5 Q. And as I understand your answer, it was
6 Mr. Filardo who made the decision to hire Motor Sports?

7 A. That is correct.

8 Q. And was he the sales manager for the company
9 during the entire period of November 2008, through
10 November 2016?

11 A. That is correct.

12 Q. Do you know at what point he actually became the
13 sales manager for the corporation?

14 A. When the company opened.

15 Q. Which would be?

16 A. I believe February of 2005.

17 Q. Who preceded him?

18 A. No one. The company opened in 2005. He was the
19 manager. Oh, who preceded -- after the fact.

20 Q. The company opened in 2005, and he became the
21 sales manager in 2005?

22 A. Yes.

23 Q. All right. Who was the prior advertising vendor
24 that Subaru used before retaining Motor Sports in 2008?

25 MR. LABUDA: Objection, but you can

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1 answer.

2 THE WITNESS: I don't know.

3 BY MS. FITZGERALD:

4 Q. So the corporation has sued Mr. Filardo civilly,
5 correct?

6 A. Correct.

7 Q. And the corporation has also sued Mr. Alexander
8 and his wife?

9 A. Can you read the names?

10 - - -

11 (Exhibit Subaru-7 was marked
12 for identification.)

13 - - -

14 BY MS. FITZGERALD:

15 Q. I'm showing you Subaru-7. Is this a copy of the
16 Complaint that the company filed in federal court against
17 Mr. Alexander and someone who I believe is his wife?

18 A. That is correct.

19 Q. Okay. And is it the company's contention that
20 it did not receive any of the advertising services that
21 it purchased or --

22 A. From Motor Sports?

23 Q. Yes.

24 A. Okay. Yes.

25 Q. Okay. So the company's position is that between

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1 November of 2008, and November of 2016, it paid
2 1.4 million dollars roughly for advertising and never
3 received any of those advertising services.

4 A. That is correct.

5 Q. The initial Complaint that was filed by the
6 company against Mr. Filardo and Subaru too happens to be
7 the Amended Complaint, but --

8 MR. LABUDA: Let's just take a quick break
9 for one second.

10 MS. FITZGERALD: Can I just finish this
11 question?

12 MR. LABUDA: I don't think there's a
13 question pending. I just wanted to clarify one
14 thing.

15 MS. FITZGERALD: I started it though.

16 MR. LABUDA: I know, but you didn't finish
17 the question.

18 MS. FITZGERALD: Well, it's a pending
19 question.

20 MR. LABUDA: Okay. You can ask the
21 question, and then we're going to take a break.

22 BY MS. FITZGERALD:

23 Q. So in paragraph 36 of Exhibit-2, it states that
24 Subaru was aware that it was receiving advertising
25 services from New Vision Advertising but never actually

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1 paid them directly.

2 A. Yes.

3 Q. As you sit here today, is that accurate? Is
4 that the company's position?

5 MR. LABUDA: Objection, but you can
6 answer.

7 THE WITNESS: I don't know.

8 MR. LABUDA: Let's take a break for a
9 second.

10 - - -

11 (There was a brief recess in
12 the proceeding.)

13 - - -

14 THE WITNESS: Can I make some
15 clarifications?

16 MS. FITZGERALD: Go ahead.

17 THE WITNESS: Okay. In regards to
18 advertising vendors and contracts, I stated Motor
19 Sports had no contract. Sales managers are not --
20 the procedures are sales managers are not to sign
21 contracts. Owners are to sign a binding
22 contract, which is why I stated this one had no
23 contract.

24 BY MS. FITZGERALD:

25 Q. Okay. Did the company have a requirement that

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1 there be contracts with its vendors?

2 A. It's not necessary to have a contract that binds
3 you in.

4 Q. Did the company have a requirement that there be
5 some sort of writing memorializing the services that it
6 was receiving from the vendor?

7 A. No. And I have one more clarification.

8 Q. Go ahead.

9 A. In regards to Exhibit-2, line 36.

10 Q. Yes.

11 A. It says Star Subaru was aware that they were
12 receiving advertising services from New Vision Industries
13 but never actually paid them. That was your question
14 before, and that is an incorrect statement. We did not
15 receive services from New Vision Advertising.

16 Q. It's the company's position as it sits here
17 today that it didn't receive advertising services from
18 New Vision or from Motor Sports?

19 A. That is correct.

20 Q. Okay. At what point -- you've already told me
21 about the phone call that came in in early 2018.

22 At what point did the company make a
23 determination that not only did it not know who was the
24 accurate vendor but that it had not received any of the
25 advertising it had paid for?

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1 A. What date, year, time period? In or around the
2 time of the investigations and discussions with John
3 Alexander and Michael Koufakis. John Alexander was not
4 able to provide documentation showing actual advertising
5 being distributed.

6 Q. Did the company have any records on its own to
7 show one way or the other whether it received any of the
8 advertising services it paid for?

9 A. What Star was presented was an invoice and a
10 sample that we know now was a sample flyer generated by
11 New Vision to Subaru Motor Sports for advertising. But
12 those fliers never actually were sent out.

13 Q. Okay. Let me back up.

14 Did the company believe it was purchasing
15 -- when it was purchasing advertising services, was the
16 advertising in the form of those mailing cards, the
17 cardboard mailers?

18 A. That is correct. That was the impression.

19 Q. Okay. Was that the majority of what the company
20 believed it was purchasing?

21 A. That is the impression.

22 Q. And there were also, I believe, a couple of
23 purchases where the company believed it was buying
24 television ads that were being run.

25 A. That is correct.

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1 mailing of the cards, did the company believe that Motor
2 Sports was designing the cards and also mailing them, or
3 did the company understand that there was another entity
4 that was actually going to mail them?

5 MR. LABUDA: Objection, but you can
6 answer.

7 THE WITNESS: I don't think it was
8 something that they were privy to. I think they
9 were under the impression that Motor Sports
10 Advertising was producing advertising. How they
11 produced that advertising is based off of the
12 bill that they provided us.

13 So if they provide us with a bill and they
14 provide us with a flyer, mailer, whatever you
15 want to call it, a card, that's our backup like
16 for us to issue a check.

17 BY MS. FITZGERALD:

18 Q. Okay. Did the company have any role in
19 providing either zip codes or a customer list or
20 demographics of anybody who was being targeted with the
21 advertising services?

22 A. The company did not.

23 Q. Was that left up to Motor Sports to decide who
24 would receive mailings?

25 A. And the sales manager.

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1 Q. The sales manager on behalf of the company?

2 A. Right.

3 Q. So it was left -- so it was the company's
4 understanding that Filardo working with the advertising
5 vendor would decide who would receive mailings?

6 A. The demographic.

7 Q. Yeah.

8 A. Yes.

9 Q. Did the company purchase mailing lists?

10 A. I don't know.

11 - - -

12 (Exhibit Subaru-8 was marked
13 for identification.)

14 - - -

15 BY MS. FITZGERALD:

16 Q. Okay. I'm showing you what we've marked as
17 Subaru-8, which are a sampling of advertising invoices
18 that was produced by Star in this lawsuit.

19 A. Okay.

20 Q. Is it fair to say that the company received
21 invoices for all of the check payments that it thereafter
22 issued?

23 A. Can you rephrase that?

24 Q. Sure. So there are check payments, checks
25 payable, to Motor Sports that we'll identify soon.

JACQUELINE CUTILLO

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1 But is it fair to say that before that
2 check was ever prepared the company would had to have
3 received an invoice?

4 A. That is correct.

5 Q. Okay. And does it appear that, you know, the
6 documents that are in Subaru-8 are the types of invoices
7 that the company would receive with regard to the checks
8 that were ultimately made payable to Motor Sports?

9 A. This is a sampling.

10 Q. Okay. Would there be any requirement that
11 somebody at the company had to review the invoices that
12 Motor Sports sent and say, yes, this was a legitimate
13 service that I purchased and okay to pay?

14 A. If the manager is handing the invoice to the
15 accounting office for it to be paid with a mailer or such
16 documentation, it's presumed that the advertising is
17 done.

18 Q. Okay. So is it the company's position that when
19 it would receive invoices such as what are in Subaru-8,
20 it would also receive a mailer?

21 A. That's correct.

22 Q. And when you say mailer, in my mind that's sort
23 of like a cardboard --

24 A. Flyer.

25 Q. Flyer.

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1 A. Something along those lines. Something should
2 and could be attached with the invoice, yes.

3 Q. Does the company -- because obviously the
4 invoices have been produced, but there are not actual
5 cardboard mailers that at least have been produced to me
6 with each of these invoices.

7 Does the company have those mailers?

8 A. Whatever mailers the company actually had were
9 produced. If they didn't have them, then they weren't
10 produced, but whatever was produced is what the company
11 has.

12 Q. If they weren't produced, then is it fair to say
13 that the invoice was sent, at least for the ones that
14 don't have it, without the mailer, without the cardboard
15 mailer?

16 A. Not sent. Handed.

17 Q. Handed.

18 A. Correct.

19 - - -

20 (Exhibit Subaru-9 was marked
21 for identification.)

22 - - -

23 BY MS. FITZGERALD:

24 Q. Okay. I'm showing you what we've marked as
25 Subaru-9, which are a series of checks that were produced

JACQUELINE CUTILLO

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1 by Star in this lawsuit that begin in April of 2011, and
2 end in November 1st, 2016.

3 A. That's what it appears.

4 Q. Okay. Does the company acknowledge that all of
5 these checks were signed by authorized check signers?

6 A. That is correct.

7 Q. And there's no contention by the company that
8 any of the signatures were forged?

9 A. That is correct.

10 Q. What is the company's understanding as far as
11 whether there was any backup presented at the time these
12 checks were signed?

13 A. They would have attached the copy of the
14 invoice.

15 Q. Was there anything attached showing, for
16 instance, postal, the U.S. postal receipt, showing that X
17 number of items were mailed?

18 A. Not that I'm aware.

19 Q. Did the company have a policy in place for the
20 requirement of a receipt from the U.S. postal office when
21 it was buying advertising in the form of mailers that
22 were being mailed out?

23 A. Not that I'm aware.

24 Q. And Subaru-9 shows that the corporation was
25 making payments to Motor Sports from its operating

JACQUELINE CUTILLO

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1 account?

2 A. That is correct.

3 Q. Should backup that was provided to the company
4 have included documentation showing proof of actual
5 mailing?

6 MR. LABUDA: Objection, but you can
7 answer.

8 THE WITNESS: I don't know. Not
9 necessarily. You have an invoice.

10 BY MS. FITZGERALD:

11 Q. Did the corporation at any point question any of
12 the invoices from Motor Sports during 2011 to 2017 --
13 '18, I'm sorry -- I'm sorry, 2008 to 2016?

14 A. Not that I'm aware of, no.

15 - - -

16 (Exhibit Subaru-10 was marked
17 for identification.)

18 - - -

19 BY MS. FITZGERALD:

20 Q. I'm showing you what we've marked as Subaru-10.

21 A. Okay.

22 Q. Do you recognize this document?

23 A. Yes.

24 Q. What is it?

25 A. This document represents the checks that you

JACQUELINE CUTILLO

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1 Is this what you were referring to?

2 A. That is correct.

3 Q. So if you look through the other pages in the
4 exhibit, it appears that the company was able to break
5 down certain amounts by year, with the breakdown
6 beginning with the year 2010.

7 So if you look at the third page of the
8 exhibit, do you see the breakdown and then the year that
9 is most remote is 2010?

10 A. I see it.

11 Q. Was the company unable to generate a breakdown
12 for 2008 or 2009?

13 A. That is correct.

14 Q. So then --

15 A. The system does not hold all of that data, but
16 it always retains the initial date of issuance and the
17 overall payment made, which is why the first page is so
18 important.

19 Q. Does the company know how the payments that were
20 made by it to Motor Sports were recorded in its books and
21 records?

22 A. Can you --

23 Q. Sure. Does the company have an advertising
24 expense account?

25 A. Yes.

JACQUELINE CUTILLO

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1 Q. Did the company record those payments which were
2 the checks that were issued to Motor Sports, did they
3 record them as advertising expenses?

4 A. Yes.

5 Q. And they were recorded then in -- is that
6 account 6544 or no?

7 A. No.

8 Q. That is account -- what is the account for
9 advertising expense?

10 A. You'd have to show me a document. I don't know
11 it by heart.

12 Q. Okay. But there's no contention from the
13 company that the recording of those expenditures were
14 somehow improper in its books and records?

15 A. No.

16 Q. On what basis does the company contend Voynow is
17 responsible for the 1.4 million approximately that's
18 listed in the damage chart relating to this scheme?

19 MR. LABUDA: Objection, but you can
20 answer.

21 THE WITNESS: I'd like to defer that to
22 the expert, but in my opinion it's because they
23 reviewed the 1099s.

24 BY MS. FITZGERALD:

25 Q. When you say review, what do you mean by that?

JACQUELINE CUTILLO

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1 A. They reviewed the 1099s.

2 Q. What do you mean by that?

3 A. Voynow would come in four times a year, review
4 our books and records, and reviewed the 1099s when they
5 were generated. And since we received the letter from
6 the IRS stating that the tax ID number did not match the
7 1099 that was supplied for 2016, but the letter we
8 received in 2018, Voynow should have noticed that 1099s
9 were not accurately being done when they reviewed the
10 1099s.

11 Q. Is there a paper file of 1099s that the company
12 keeps?

13 A. What do you mean?

14 Q. You said that Voynow was receiving the 1099s
15 allegedly.

16 MR. LABUDA: Objection.

17 BY MS. FITZGERALD:

18 Q. Is there a file of 1099s that the company keeps?

19 A. When Voynow would come in for their year-end
20 work, they would review the 1099s.

21 Q. Again, is there a file of 1099s that the company
22 keeps?

23 A. They keep it for a period of time.

24 Q. So for each tax year, does the company keep some
25 sort of file for 1099s?